IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5586 OF 2002

Babu Tatya Mane and others Petitioners

versus

Datta Narahari Kukade & others Respondents

R.V.Mane, adv. for petitioner.

T.S.Ingale, adv. for R-2.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th December 2004

PC :

1. This writ petition under Article 227 of the Constitution of India challenges an order passed by Maharashtra Revenue Tribunal on 10th August 2001 in Revision Application No.MRT-SS-115/92. The revision application was preferred by respondent no.2. He was aggrieved and dis-satisfied with an appellate order in Tenancy Petition No.14 of 1990 and 1 of 1987, dated 30th July 1992 delivered by Assistant Collector, Miraj.

2. It was the case of the second respondent that

the deceased landlady had sold to him by a registered sale deed the land in question for a consideration of Rs.500/-. The sale deed is dated 15th October 1957. It was his case that his name has been mutated in the record of rights as landlord in cultivation as well as in possession column. The appellate authority, according to him, committed an error which is apparent on the face of record by relying upon the inquiry conducted in 1959-60 by Tahsildar's Office, Miraj which was later on dropped on an assumption that there existed a landlord and tenancy relationship between landlady and predecessor in title of petitioner namely Tatya Mane. That apart, according to the respondent no.2 no reliance could be placed on these proceedings inasmuch as a statement of the deceased landlady was recorded therein to the effect that Tatya Mane was not a tenant in respect of suit land and he was never placed in possession thereof. The complaint of respondent no.2 was that by relying upon a stray entry of the year 1956-57, the appellate authority could not have re-opened the issues pertaining to the status of Mr.Tatya Mane. Moreso, when no inquiry u/s 70B was initiated at the instance of deceased Tatya. Similarly, reliance could not be placed

upon inquiry initiated in the year 1983 u/s 32F and 32G. Therefore, the proceedings by the Tahsildar, Kavthe Mahankal u/s 84-C of the Tenancy Act were rightly given up and dropped. The order passed by the Tahsildar that there is no relationship of landlord and tenant in respect of land survey no.84/1 on the relevant date i.e. Tillers Day does not deserve to be reopened. The MRT has accepted the case of the second respondent and reversed the decision in favour of present petitioner rendered by the Assistant Collector.

3. In my view, the sale deed is dated 15th October 1957. The matter was remanded admittedly to the Tahsildar, Kavthe Mahakal by order dated 25th May 1989 in Appeal No.21/1984. The Tahsildar, Kavthe Mahakal upon remand examined the rival contentions in the light of materials placed before him and rendered his findings on 12th July 1990 in favour of respondent no.2. It appears that the said finding was challenged on the grounds which have been reproduced by me hereinabove. While taking cognizance of the appeal, after remand, once again the Assistant Collector records a finding in favour of present petitioner on the basis that the date of purchase

is postponed and once the date of purchase is postponed, issue of existence of relationship of landlord and tenant cannot be established. The proceedings initiated in the year 1957 and postponed in the year 1960 are not challenged, according to the appellate authority, therefore, the sale deed effected is null and void. The appellate authority places reliance upon the fact that the present petitioner is deemed purchaser of the land after procedure u/s 32(F)(1)(a) has been followed.

4. In my view, the revisional authority has not in any manner reappreciated the findings of fact but has stepped in in it's revisional jurisdiction to correct the ex-facie error committed by the appellate authority. The facts reproduced by me in detail would indicate that the inquiries in question are allegedly postponed on the assumption that there existed a relationship of landlord and tenant. However, it is not permissible to reopen such issues and proceed to re-examine the matters in exercise of powers u/s 84(C) of the BTAL Act. There is merit in the submission of Mr.Ingle that the inquiry ought to have been initiated within a reasonable time. In the present case, cogent and sufficient

reasons have been assigned by the Tahsildar while refusing to initiate inquiry and invoke powers u/s 84C. That finding has been upheld after adverting to the materials by MRT..

5. In my view, such findings do not merit interference once they are not demonstrated to be perverse or vitiated by any error apparent on the face of record. The petition is, therefore, without any substance. However, if the petitioners desire to invoke the provisions of Section 70-B and claim appropriate declaration of their status, it will be always open to them to do so. Needless to state that in such proceedings the authorities will examine the merits of rival claims. I need not express any opinion in that behalf. Petition disposed of.

(S.C.DHARMADHIKARI, J.)